

BYRON V. ANDERSON

IBLA 86-49

Decided April 29, 1987

Appeal from a decision of the Boise District Office, Bureau of Land Management, rejecting application for desert land entry I 7142.

Affirmed.

1. Desert Land Entry: Applications -- Withdrawals and Reservations:
Effect of

BLM may properly reject a desert land entry application where, prior to classification of the lands sought and prior to the entry being allowed, the lands have been withdrawn by a public land order as part of the Snake River Birds of Prey Area.

APPEARANCES: Byron V. Anderson, Nampa, Idaho, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Byron V. Anderson has appealed from a decision of the Boise District Office, Bureau of Land Management (BLM), dated September 27, 1985, rejecting desert land entry application I-7142. 1/ In support of its decision, BLM stated that in November 1980 the Secretary of the Interior issued Public Land Order (PLO) No. 5777 withdrawing the lands sought by appellant from entry under the Desert Land Act. This order established the Snake River Birds of Prey Area. Rejection was appropriate, BLM concluded, because regulation 43 CFR 2520.0-8(a) requires that desert land entries be made only on "unreserved, unappropriated" public land.

Appellant Anderson points out on appeal that he filed his desert land entry application prior to PLO No. 5777 and contends that such Order has "no

1/ Appellant's application was filed pursuant to section 1 of the Act of Mar. 3, 1877, as amended, 43 U.S.C. § 321 (1982), commonly known as the Desert Land Act. Appellant seeks lands in NW 1/4 sec. 26 and NE 1/4 sec. 27, T. 5 S., R. 7 E., Boise Meridian.

priority" over his application. The record shows that Anderson filed a complete application for desert land entry at 10 a.m. on August 29, 1973, pursuant to PLO No. 5364, opening lands described therein to operation of the public land laws generally, subject, inter alia, to the provisions of existing withdrawals. 38 FR 20328 (July 31, 1973). By letter of June 14, 1974, BLM informed Anderson that his petition-application 2/ would be forwarded to the Boise District Office for "the required field examination and classification action."

The above facts describing the progress of Anderson's application are set forth in some detail to ascertain what rights, if any, appellant had that might cause his application to survive the withdrawal of PLO No. 5777. That withdrawal, while describing the lands sought by appellant, was expressly made subject to valid existing rights.

Departmental case law makes clear that the filing of an application to appropriate public land, such as an application for a desert land entry, does not create any present right to the land in the applicant. Everett H. Adkins, A-28245 (May 23, 1960). Thus, an applicant has no valid existing right that will survive a withdrawal of land, even though the public land order accomplishing the withdrawal expressly makes such action subject to valid existing rights. Id. at 3. A similar holding is present in Frances M. Williams, A-28034 (Aug. 20, 1959), wherein Deputy Solicitor Fritz concluded, "The filing of an application for desert land entry gives the applicant no right to the land, the allowance of such an application being discretionary with the Secretary." Id. at 2. BLM's rejection of the application of appellant Anderson was consistent with the above principles. See also Richard S. Gregory, 96 IBLA 256 (1987), and Gray E. Carter, 65 IBLA 338 (1982).

In the Petition for Classification accompanying the application for desert land entry filed by Anderson, classification of land is described as an action "entirely within [the Secretary's] discretion." Guiding that discretion are certain principles set forth at 43 CFR Group 2400. In issuing PLO No. 5777, the Secretary established the Snake River Birds of Prey Area to protect some 65,000 acres of essential nesting habitat for Snake River birds of prey in Ada, Canyon, Elmore, and Owyhee Counties. Also part of this withdrawal are approximately 420,000 acres of land, including those lands sought by appellant, that were specifically withdrawn from entry under the Desert Land Act. 45 FR 78688 (Nov. 26, 1980). Appellant has failed to show any abuse of discretion by the Secretary in issuing PLO No. 5777.

2/ Accompanying the application filed by appellant was a petition to the Secretary of the Interior to have the lands in n.1 "classified or otherwise made available for entry or disposition pursuant to my application."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Boise District Office is affirmed.

John H. Kelly
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge